

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ESAUL CARDENAS,

Petitioner,

vs.

WARDEN VARE, *et al.*,

Respondents.

3:04-cv-00720-PMP-RAM

ORDER

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, by Esaul Cardenas, a prisoner represented by counsel. On March 11, 2008, this Court denied the petition on the merits. (ECF No. 28). Judgment was entered on the same date. (ECF No. 29). Petitioner appealed. (ECF No. 30). Pursuant to an order of the United States Court of Appeals for the Ninth Circuit, this Court appointed counsel for petitioner. (ECF No. 39).

On July 12, 2011, the United States Court of Appeals for the Ninth Circuit entered an unpublished memorandum opinion vacating and remanding the case to this Court. (ECF No. 46). The Court of Appeals held: “Given the ambiguities in Cardenas’s pro se pleadings, the misstatements in the Warden’s filings, and the status of the record before it, we conclude that it would have been more appropriate for the district court to have granted Cardenas leave to amend and clarify his claims.” (ECF No. 46, at p. 6) (citation omitted). The Court of Appeals vacated the judgment and remanded with instructions to allow Cardenas to amend his petition. (*Id.*). The Court of Appeals specifically noted that:


1 This will permit the Warden to file an amended responsive pleading,
2 and the district court will then be in a position to examine, as it deems
3 necessary, matters including: (1) the exhaustion of state remedies and
4 whether any state remedies remain available, (2) procedural default,
5 (3) the need for an evidentiary hearing or further development of the
6 record, (4) the proper standard of review, and (5) the merits of
7 Cardenas' claim.

8 (ECF No. 46, at p. 6, n.3).

9 **IT IS THEREFORE ORDERED** that petitioner is directed to file an amended petition,
10 through appointed counsel, within **forty-five (45) days** from the entry of this order.

11 **IT IS FURTHER ORDERED** that respondents are directed to file a responsive pleading to
12 the amended complaint within **forty-five (45) days** after being served with the amended petition. In
13 filing the responsive pleading, respondents shall address the matters specified in footnote 3 of the
14 Court of Appeals' memorandum opinion, as specified above.

15 DATED: August 24, 2011.

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PHILIP M. PRO
18 United States District Judge
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